

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

NICHOLAS STEPHENS,
Plaintiff,

v.

UNITED PARCEL SERVICE, INC.,
Defendant.

Case No. 3:23-cv-06081-JSC

**ORDER RE: MOTION TO DISMISS
AND PLAINTIFF’S RELATED
MOTIONS**

Re: Dkt. Nos. 6, 14, 15, 16

Nicholas Stephens, who is representing himself, filed this personal injury action in the Alameda County Superior Court. Defendant, United Parcel Service, removed the action based on diversity of citizenship. *See* 28 U.S.C. § 1332. Defendant’s motion to dismiss for failure to state a claim is now pending before the Court. (Dkt. No. 6.¹) After Defendant’s motion was fully briefed, Plaintiff filed motions for ADA accommodations and an evidentiary hearing related to any hearing on the motion to dismiss, as well as a motion for appointment of pro bono counsel. (Dkt. Nos. 14, 15, 16.) After carefully considering the parties’ briefs and the relevant legal authority, the Court concludes oral argument is unnecessary, *see* Civ. L.R. 7-1(b), and GRANTS the motion to dismiss with leave to amend. Plaintiff’s motions are DENIED for the reasons explained below.

DISCUSSION

A. Motion to Dismiss

A complaint must allege “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). To avoid dismissal, a complaint must contain more than “naked assertion[s],” “labels and conclusions,” or “a formulaic recitation

¹ Record Citations are to material in the Electronic Case File (“ECF”); pinpoint citations are to the ECF-generated page numbers at the top of the document.

of the elements of a cause of action.” *Twombly*, 550 U.S. at 555–57. “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Further, a complaint must contain “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). When a plaintiff files a complaint without representation by a lawyer, the Court must “construe the pleadings liberally ... to afford the petitioner the benefit of any doubt.” *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010) (cleaned up). “A district court should not dismiss a pro se complaint without leave to amend unless it is absolutely clear that the deficiencies of the complaint could not be cured by amendment.” *Rosati v. Igbinoso*, 791 F.3d 1037, 1039 (9th Cir. 2015) (cleaned up).

Plaintiff’s complaint, which was filed on the state court form for a complaint based on personal injury, property damage, or wrongful death, does not include sufficient information to determine the nature of his claim(s). (Dkt. No. 1-2.) Plaintiff checked the boxes for “gross negligence, intentional tort, premises liability, and other “professional misconduct.” (*Id.* at 4.) Under the “Cause of Action—Premise Liability” heading, Plaintiff alleges “plaintiff was injured on the following premises [unreadable] the following fashion mail sorting facility, premediated hate crime physical assault W/GBI (jon doe (1) layed [sic] and waited) witnessed by facility surveillance [sic] system, see attached NLRB charge and Affidavit, Awaiting Oakland police report.” (*Id.* at 5.)

Although the federal rules require brevity in pleading, a complaint nevertheless must be sufficient to give the defendants “fair notice of the claim and the ‘grounds upon which it rests.’” *See Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (cleaned up). “A complaint that fails to state the specific acts of the defendant that violated the plaintiff’s rights fails to meet the notice requirements of Rule 8(a).” *Medina Chiprez v. Becerra*, No. 20-CV-00307-YGR (PR), 2020 WL 4284825, at *3 (N.D. Cal. July 27, 2020). Plaintiff’s allegations fail to satisfy this standard. The basis for Plaintiff’s personal injury and/or negligence claim(s) is unclear from the Complaint. However, Plaintiff’s opposition to Defendant’s motion to dismiss and later filed declaration contain additional information regarding the nature of his claim(s). (Dkt. Nos. 10, 12.)

1 Accordingly, the Court grants Defendant's motion to dismiss for failure to state a claim
2 and grants Plaintiff leave to amend to elaborate the basis for his legal claim(s) and allege facts in
3 support of those claim(s). Because the nature of Plaintiff's legal claims is unclear at this time, the
4 Court declines to consider Defendant's arguments that Plaintiff's claims are barred by the
5 workers' compensation exclusivity doctrine and are preempted by Section 301 of the Labor
6 Management Relations Act.

7 **B. Motion for Appointment of Counsel**

8 "[T]he appointment of counsel in a civil case is ... a privilege and not a right." *Gardner v.*
9 *Madden*, 352 F.2d 792, 793 (9th Cir. 1965); *see also Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir.
10 2009) (stating that "[g]enerally a person has no right to counsel in civil actions"). The Court "may
11 under exceptional circumstances' appoint counsel for indigent civil litigants pursuant to 28 U.S.C.
12 § 1915(e)(1)." *Palmer*, 560 F.3d at 970 (citation omitted). To determine whether "exceptional
13 circumstances" are present, the "court must evaluate the likelihood of success on the merits as well
14 as the ability of the petitioner to articulate his claims pro se in light of the complexity of the legal
15 issues involved." *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983).

16 Having considered these factors, the Court concludes Plaintiff has not yet demonstrated a
17 likelihood of success or that the issues in this case are sufficiently complex, so the interests of
18 justice do not warrant appointment of pro bono counsel at this time. Plaintiff's motion for
19 appointment of counsel is denied without prejudice. (Dkt. No. 15.)

20 **C. Plaintiff's Other Pending Motions**

21 Plaintiff's motion for ADA accommodations and an evidentiary hearing relate to the
22 hearing on Defendant's motion to dismiss. (Dkt. Nos. 14, 16.) Because the Court grants that
23 motion with leave to amend, Plaintiff's motions are denied as moot without prejudice to renewal
24 in the context of any future motion to dismiss.

25 **CONCLUSION**

26 For the reasons stated above, Defendant's motion to dismiss is granted with leave to
27 amend. Plaintiff's motion for appointment of pro bono counsel is denied. Plaintiff's motion for
28 an ADA accommodation and an evidentiary hearing are denied as moot.

Any amended complaint is due February 29, 2024. **Plaintiff is reminded he may seek assistance from the Legal Help Center, a free service of the Volunteer Legal Services Program, by calling 415-782-8982 or emailing fedpro@sfbar.org.**

This Order disposes of Docket Nos. 6, 14, 15, and 16.

IT IS SO ORDERED.

Dated: February 2, 2024


JACQUELINE SCOTT CORLEY
United States District Judge

United States District Court
Northern District of California